

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Petition by the Colorado Public Utilities Commission, Pursuant to 47 C.F.R. § 54.207(c), for Commission Agreement in Redefining the Service Area of CenturyTel of Eagle, Inc., A Rural Telephone Company	)	CC Docket No. 96-45

To: The Commission

**REPLY COMMENTS OF N.E. COLORADO CELLULAR, INC.**

N.E. Colorado Cellular, Inc. ("NECC"), by counsel and pursuant to the Commission's *Public Notice* dated April 12, 2004,<sup>1</sup> provides reply comments in support of the petition of the Colorado Public Utility Commission ("COPUC") seeking FCC concurrence with the COPUC's decision to redefine the service areas of CenturyTel of Eagle, Inc. ("CenturyTel") as provided under Section 54.207 of the Commission's rules, 47 C.F.R. Section 54.207. These reply comments respond to CenturyTel's comments.

**I. THIS CASE IS ABOUT SERVICE AREA REDEFINITION; IT IS NOT ABOUT ETC DESIGNATION.**

In its comments, NECC headlined that this case is solely about whether the FCC should affirm its decision to concur with the COPUC's decision to redefine CenturyTel's service area. It is not about designating NECC as an ETC, nor is it about defining where

---

<sup>1</sup> *Parties Are Invited To Update The Record Pertaining To Pending Petitions For Eligible Telecommunications Carrier Designations*, DA-04-999 (rel. April 12, 2004). These comments are filed with the Chief, Wireline Competition Bureau, who has delegated authority pursuant to 47 C.F.R. Section 54.207(e). *See also Pleading Cycle Established for Comments on Proceeding Regarding the Definition of the Rural Service Areas of Two Rural Telephone Companies in the State of Colorado*, Public Notice, DA 03-26 (rel. Jan. 7, 2003).

NECC should be an ETC. Those decisions have been made by a final and unappealable order over which this Commission, pursuant to Section 214(e)(2), has no authority to countermand. The COPUC's statutory authority thereunder is controlling.

CenturyTel asks the FCC to take action that it has no authority to take, seeking to somehow override the COPUC's decision, made three years ago, to redefine CenturyTel's service area.<sup>2</sup> CenturyTel had an opportunity to litigate COPUC's decision in 2001, and it had another opportunity to ask COPUC to reexamine it in the course of NECC's ETC designation proceeding. It has no legal basis to now come before this Commission to request, in the context of this proceeding, reversal of COPUC's decision – which, as noted in NECC's comments, was made by a lawfully adopted rule.<sup>3</sup>

It is a fact that the FCC has made findings in *Virginia Cellular* and *Highland Cellular* that suggest a new line of FCC thinking on ETC designations made pursuant to Section 214(e)(6). But that line of thinking represents precedent. The FCC's ruling is not binding on states making ETC designations under Section 214(e)(2).<sup>4</sup> Moreover, both *Virginia Cellular* and *Highland Cellular* are on appeal, and the FCC's reasoning on service area designations is likely to be ultimately decided in the courts.

---

<sup>2</sup> CenturyTel Comments at p. 12 (CenturyTel erroneously states that COPUC redefined its "study area" when in fact only CenturyTel's "service area" has been redefined.)

<sup>3</sup> See NECC Comments at p. 4.

<sup>4</sup> See, e.g., AT&T Wireless PCS of Cleveland, Inc., et al., Order Granting Petition for Designation as an Eligible Telecommunications Carrier, Order No. 1 (WUTC, April 13, 2004) at para. 34 ("...the FCC's decision in *Virginia Cellular* is not binding on this Commission. In *Virginia Cellular*, the FCC intended to apply the framework in that decision to other ETC designations pending before the FCC. The FCC did not—indeed cannot—bind state commissions to its analysis." See also, *Federal-State Joint Board on Universal Service, Recommended Decision*, FCC 04J-1 (Jt. Bd. rel. Feb. 27, 2004) ("We believe that federal guidelines concerning ETC qualifications should be flexible and nonbinding on the states. Under our recommendation, state commissions would retain their rights to determine eligibility requirements for designating ETCs. Each state commission will be uniquely qualified to determine its own ETC eligibility requirements as the entity most familiar with the service area for which ETC designation is sought").

## **II. COPUC HAS LAWFULLY RULED THAT CENTURYTEL'S CONCERNS ABOUT CREAM-SKIMMING ARE EFFECTIVELY MOOT.**

CenturyTel has exercised its right, pursuant to 47 C.F.R. Section 54.315, to disaggregate its support into multiple cost zones. If CenturyTel does not believe that its plan of disaggregation is sufficient to accurately target support to its high-cost wire centers, it is free to file a request with COPUC to further disaggregate.<sup>5</sup> COPUC has made a lawful decision that CenturyTel's disaggregation effectively moots cream skimming concerns.<sup>6</sup> That decision was made after careful consideration in contested hearing and notice and comment rulemaking proceedings.

CenturyTel's disaggregation plan is the most accurate information available as to which areas within CenturyTel's areas are high-cost and which are low-cost. Thus, there is no need to rely on a proxy such as population density, which is a poor substitute for the actual identification of high- and low-cost zones contained in a disaggregation plan. It would be of no use for COPUC to submit population density data that is less reliable than CenturyTel's disaggregation plan in predicting where costs are high or low. CenturyTel is stretching quite far to ask that such unreliable data be used in place of disaggregation data that is based on the company's knowledge of its own costs. Colorado has ruled that CenturyTel is in the best position to accurately target support to high-cost areas and it has done so in its disaggregation plan.

This case is about whether the FCC will affirm its prior concurrence with the COPUC's finding that redefining CenturyTel's service area is consistent with the three

---

<sup>5</sup> CenturyTel asks the FCC permit it to disaggregate support if it grants its concurrence with the COPUC's petition. The FCC has no authority to do so, as that right rests with the COPUC pursuant to 47 C.F.R. Section 54.315 (c)(5).

<sup>6</sup> See COPUC Supplement at p. 6.

concerns expressed by the Joint Board. As stated in NECC's comments, the COPUC has thoroughly explored these issues in a contested case proceeding and determined that service area redefinition is best for Colorado's rural citizens.

### **III. THE FCC MAY NOT 'DENY' COPUC'S PETITION.**

CenturyTel urges the FCC to "deny" COPUC's petition.<sup>7</sup> Under Section 214 of the Act and 54.207 of the rules, the FCC and the state must agree on a redefinition. There is no provision in the statute or rules permitting denial by either party. The FCC cannot force a state to reconsider its final order, lawfully made under statutory authority contained in Section 214(e)(2).

### **IV. COPUC'S DECISION IS BEST FOR COLORADO CONSUMERS.**

Aside from the fact that the COPUC's decision complies with the three concerns enunciated by the Joint Board, there is a very practical reason why the COPUC's decision to redefine CenturyTel's service area is the best decision for Colorado's rural consumers. COPUC has designated other wireless carriers as ETCs in rural Colorado. It is clear that COPUC believes that introducing multiple ETCs throughout rural Colorado will alleviate any possible cream skimming concerns that CenturyTel has expressed. These considerations, taken into account by the COPUC in the course of its ETC designation process and in rulemaking proceedings, are precisely why the FCC should defer to a state's better judgment in service area redefinition proceedings.<sup>8</sup>

---

<sup>7</sup> CenturyTel Comments at p. 14.

<sup>8</sup> See *Highland Cellular, Inc.*, FCC 04-37 (rel. Apr. 12, 2004) ("*Highland Cellular*") at ¶ 42 ("We find that the Virginia Commission is uniquely qualified to examine the proposed redefinition because of its familiarity with the rural service area in question.")

NECC is today receiving high-cost support in CenturyTel's areas in Colorado. CenturyTel has presented no evidence to this Commission or to COPUC as to how consumers there are being harmed by NECC's entry. NECC is actively investing far more than it is receiving in high-cost support into CenturyTel's areas to improve network quality so that consumers there have an opportunity to choose NECC's service. The benefits that Congress intended to deliver to rural Colorado are being realized.

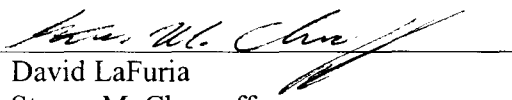
**V. CONCLUSION**

The correct course is to respect the COPUC's judgment as to what is best for its citizens and affirm the Commission's prior decision to permit the COPUC's service area redefinition to become effective as of November 26, 2002.

Respectfully submitted,

**N.E. COLORADO CELLULAR, INC.**

By:

  
David LaFuria  
Steven M. Chernoff  
Its Attorneys

Lukas Nace Gutierrez & Sachs, Chartered  
1111 19<sup>th</sup> Street, N.W.  
Suite 1200  
Washington, DC 20036  
(202) 857-3500

June 9, 2004

## CERTIFICATE OF SERVICE

I, Kimberly Verven, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 9<sup>th</sup> day of June, 2004, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing *Comments of N.E. Colorado Cellular, Inc.* filed today to the following:

Andrew R. Newell  
Nichols & Associates  
1919 14<sup>th</sup> Street, Suite 500  
Boulder, CO 80302

Anthony Marquez  
Office of the Attorney General  
Colorado Public Utilities Commission  
State Services Building  
1525 Sherman Street, 6<sup>th</sup> FL  
Denver, CO 80203

Barry L. Hjort  
P.O. Box 300  
Littleton, CO 80160

Pamela Fischhaber  
Colorado Public Utilities Commission  
1580 Logan Street, OL1  
Denver, CO 80203

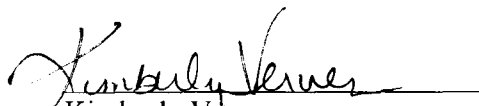
Eric Einhorn, Chief  
Telecommunications Access Policy  
Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 5-C360  
Washington, D.C. 20554

Diane Law Hsu, Deputy Chief  
Telecommunications Access Policy  
Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 6-A360  
Washington, D.C. 20554

Anita Cheng, Assistant Chief  
Telecommunications Access Policy  
Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 5-A445  
Washington, D.C. 20554

Thomas Buckley, Esq.  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room  
Washington, D.C. 20054

Karen Brinkmann, Esq.  
Tonya Rutherford, Esq.  
Latham & Watkins LLP  
555 Eleventh Street, N.W.  
Suite 1000  
Washington, DC 20004

  
Kimberly Verven